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**MAY 19 2003**

**OFFICE OF PETITIONS**

In re Application of  
Yuhpyng L. Chen  
Application No. 08/764,110  
Filed: December 6, 1996  
Title: SUBSTITUTED HETEROCYCLIC  
DERIVATIVES

DECISION DISMISSING  
PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition filed on September 27, 2002, pursuant to 37 C.F.R. §1.137(b)<sup>1</sup>, to revive the above-identified application.

The Office regrets the delay in issuing this decision.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed June 27, 2001, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time pursuant to 37 CFR 1.136 were obtained. Accordingly, the above-identified application became abandoned on September 28, 2001. A Notice of Abandonment was mailed on May 7, 2002.

With this petition, the petitioner submitted a response, paid the petition fee, and made the proper statement of unintentional delay.

<sup>1</sup> A grantable petition pursuant to 37 CFR §1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

The instant petition is not grantable because requirement (1) above has not been satisfied. Petitioner did not submit the required reply to the Office action. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed<sup>2</sup>. In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(b)(1) (i.e., a Notice of Appeal (and fee required by law); an amendment that *prima facie* places the application in condition for allowance; a continuing application under 37 C.F.R. §1.53(b); a request for continuing examination under 37 C.F.R. §1.114, if applicable; or a 37 C.F.R. §1.129(a) submission, if applicable). An amendment was received along with the instant petition. This amendment was considered by the Examiner, but it failed to place the application in condition for allowance. A courtesy copy of the Examiner's Advisory Action has been enclosed.

Consequently, the petition under 37 C.F.R. §1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The reply to this letter may be submitted by mail<sup>3</sup>, hand-delivery<sup>4</sup>, or facsimile<sup>5</sup>.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to maintenance fees unless a Change of Correspondence Address Form (PTO/SB/122) is submitted for the above-identified application. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay<sup>6</sup>. In the event that such an

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<sup>2</sup>See M.P.E.P. 711.03(c).

<sup>3</sup> Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1460, Alexandria, VA 22313-1460. **Note that this is a new address, as the USPTO has changed addresses as of May 1, 2003.**

<sup>4</sup> Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

<sup>5</sup> (703) 308-6916, Attn: Office of Petitions.

<sup>6</sup> See 37 CFR 10.18(b); cf. Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in filing this petition 37 CFR 1.137(b) was intentional, petitioner must notify the Office.

**The application file will be retained in the Office of Petitions for two (2) months.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.



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